

Assembly Bill No. 1187

Passed the Assembly September 12, 2007

Chief Clerk of the Assembly

Passed the Senate September 11, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 5521.5, 7370, 8254, 8371, 8436, 12006, and 12157 of the Fish and Game Code, relating to fish.

LEGISLATIVE COUNSEL'S DIGEST

AB 1187, DeSaulnier. Sturgeon: abalone: lobster: Centrarchidae: penalties.

(1) Existing law prohibits any person from taking abalone for commercial purposes in specified districts. Existing law establishes a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license to take a fish, reptile, or amphibia, and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit, possesses the abalone for commercial purposes.

This bill would repeal the rebuttable presumption that a person who takes or possesses a specified amount of abalone possesses it for commercial purposes. The bill would make the possession of specified amounts of abalone prima facie evidence that it is possessed for commercial purposes.

(2) Under existing law, except as specified, it is unlawful to buy or sell, or to offer to buy or sell, a whole sturgeon, or any part thereof, including eggs, or to possess sturgeon, or parts thereof, including eggs, in any place where fish are bought, possessed for sale, or sold, or where food is offered for sale, or in any truck or other conveyance operated by or for a place so selling or possessing fish.

Existing law prohibits the taking of lobsters for commercial purposes except under a valid lobster permit.

Existing law generally prohibits the sale or purchase of fish of the family Centrarchidae (Sacramento perch, crappie, black bass, and sunfish), other than cultured fish.

This bill, with certain exceptions, would make it unlawful to take or possess for commercial purposes, buy, or sell, or to offer to buy or sell, any whole sturgeon, or any part thereof, including, but not limited to, eggs, thereby imposing a state-mandated local program by creating a new crime.

The bill would make the possession of specified amounts of sturgeon or lobster prima facie evidence that it is possessed for commercial purposes.

The bill would also prohibit the taking or possession for commercial purposes of fish of the family Centrarchidae, thereby imposing a state-mandated local program by creating new crimes.

The bill would make a violation of the provisions prohibiting the sale, purchase, or possession of sturgeon for commercial purposes subject to a fine of not less than \$5,000, or more than \$10,000, or imprisonment in a county jail not to exceed one year, or both the fine and imprisonment. The bill would make a violation of the provisions prohibiting the sale, purchase, or possession of lobster subject to a fine of not less than \$5,000, or more than \$10,000, or imprisonment in a county jail not to exceed 6 months, or both the fine and imprisonment.

The bill would require a court to permanently revoke any commercial fishing license or commercial fishing permit, and authorize the court to permanently revoke any sportfishing license, issued to a violator by the Department of Fish and Game. The bill would authorize the seizure and forfeiture of any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of specified offenses. The bill would provide that 50% of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to those provisions is to be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 5521.5 of the Fish and Game Code is amended to read:

5521.5. (a) In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17,

or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) For a person who is required to obtain a license pursuant to Section 7145, the possession of more than 12 individual abalone or abalone in excess of the annual bag limit is prima facie evidence that the person possesses the abalone for commercial purposes.

SEC. 2. Section 7370 of the Fish and Game Code is amended to read:

7370. (a) It is unlawful to take or possess for commercial purposes, buy or sell, or to offer to buy or sell, any whole sturgeon, or any part thereof, including, but not limited to, eggs, except as follows:

(1) A sturgeon, or parts thereof, that is taken or possessed by, and is the cultured progeny of, an aquaculturist who is registered under Section 15101, may be sold or purchased subject to regulations of the commission.

(2) A sturgeon, or parts thereof, that is taken commercially in another state that permits the sale of the fish and lawfully imported under Section 2363, may be possessed, sold, or purchased.

(3) Sturgeon, or parts thereof, taken pursuant to a sport fishing license in accordance with Section 7230.

(b) For purposes of this section, it is prima facie evidence that a sturgeon, or parts thereof, is possessed for commercial purposes if the possession of sturgeon is more than two times the sport bag limit.

SEC. 3. Section 8254 of the Fish and Game Code is amended to read:

8254. (a) Lobsters shall not be taken for commercial purposes except under a valid lobster permit issued to that person that has not been suspended or revoked, subject to regulations adopted by the commission.

(b) Every person who takes, assists in taking, possesses, or transports lobsters for commercial purposes while on any boat, barge, or vessel, or who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take lobsters for commercial purposes, shall have a valid lobster permit.

(c) The permit fee for a lobster permit is two hundred sixty-five dollars (\$265).

(d) The fee for a lobster crewmember permit is one hundred twenty-five dollars (\$125).

(e) For the purposes of this section, it is prima facie evidence that lobster is taken for commercial purposes if the possession of lobster is more than three times the sport bag limit.

SEC. 4. Section 8371 of the Fish and Game Code is amended to read:

8371. Striped bass or salmon, or parts thereof, may be sold or offered for sale only under the following conditions:

(a) If the striped bass, or parts thereof, is taken or possessed by, and is the cultured progeny of, an aquaculturist who is registered under Section 15101, that striped bass may be sold or purchased subject to regulations of the commission.

(b) If the striped bass, or parts thereof, is taken legally in another state that permits the sale of that fish and if the fish is lawfully imported under Section 2363, the striped bass, or parts thereof, may be possessed, sold, or purchased.

(c) If the salmon, or parts thereof, is taken legally in another state that permits the sale of salmon, and is lawfully imported consistent with Section 2361, the salmon, or parts thereof, may be possessed, sold, or purchased.

(d) If the salmon, or parts thereof, is taken in accordance with Article 4 (commencing with Section 8210.2), the salmon, or parts thereof, may be possessed, sold, or purchased.

SEC. 5. Section 8436 of the Fish and Game Code is amended to read:

8436. Except as provided in Section 8436.5, fish of the family Centrarchidae (Sacramento perch, crappie, black bass, and sunfish) shall not be taken or possessed for commercial purposes, sold, or purchased, other than fish that are cultured pursuant to Division 12 (commencing with Section 15000).

SEC. 6. Section 12006 of the Fish and Game Code is amended to read:

12006. (a) Notwithstanding Section 12002:

(1) The punishment for a violation of Section 7370 is a fine of not less than five thousand dollars (\$5,000), or more than ten thousand dollars (\$10,000), imprisonment in a county jail not to exceed one year, or both the fine and imprisonment.

(2) The punishment for a violation of Section 8254 is a fine of not less than five thousand dollars (\$5,000), or more than ten

thousand dollars (\$10,000), imprisonment in a county jail not to exceed six months, or both the fine and imprisonment.

(b) The court shall permanently revoke any commercial fishing license or commercial fishing permit, and may permanently revoke any sport fishing license issued to the violator by the department. Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense subject to this section may be seized and may be ordered forfeited by the court pursuant to subdivision (c) of Section 12157. Fifty percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

SEC. 7. Section 12157 of the Fish and Game Code is amended to read:

12157. (a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the offense charged.

(b) The judge shall, if the offense is punishable under Section 12008 of this code or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle that is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c) (1) The judge may, for conviction of a violation of either of the following offenses, order forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing the offense:

(A) Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears.

(B) Any offense that involves the sale, purchase, or possession of abalone for commercial purposes.

(C) Any offense that involves the sale, purchase, or possession of sturgeon or lobster, pursuant to Section 7370 or 8254.

(2) In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court. In determining whether or not to order forfeiture of a vehicle, the court shall, in addition to any other relevant factor, consider whether the defendant is the owner of the vehicle and whether the owner of the vehicle had knowledge of the violation.

(3) It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations, as determined by the court.

(d) A judge shall not order the forfeiture of a vehicle under this section if there is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver's license.

(e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(f) (1) The proceeds from all sales under this section, after payment of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund.

(2) A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(g) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus also apply to the judge, referee, or juvenile hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(h) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(i) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order

forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor